

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





74-2442

TO BE ARGUED BY  
WILLIAM H. REID PRO-SE

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT MAR 7 1975

COMMISSIONER OF INTERNAL REVENUE

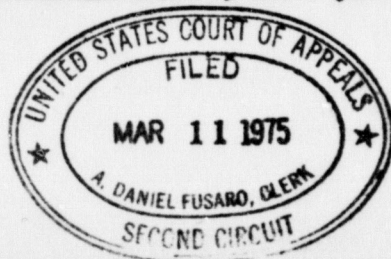
APPELEE

VS

WILLIAM H. REID

APPELLANT

APPELLANT'S BRIEF AND APPENDIX



PAGINATION AS IN ORIGINAL COPY



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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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DOCKET NO. 74-2442

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WILLIAM H. REID,

VS

APPELLANT PRO SE

COMMISSIONER OF INTERNAL REVENUE

APPELLEE

-----\*

APPELLANT PRO SE'S BRIEF  
STATEMENT

-----

Appellant Pro Se , William H. Reid, appeals from a decision by the United States Tax Court, filed July 16, 1974, wherein the cash flow in my checking account was erroneously taken as my personal income and then used as the incorrect basis for determining alleged deficiencies in my income tax for the years 1968, and 1969.



ARGUMENTPOINT I

(WITH REFERENCE TO: TAX COURT MEMO 1974-185 MEMO-  
RANDOM FINDINGS OF FACT AND OPINION PAGE 3))

THE UNITED STATES TAX COURT ERRED IN THAT AFTER CORRECTLY STATING, "DURING THE YEARS AT ISSUE, THE PETITIONER WAS ALSO SELF EMPLOYED AS A LICENSED REAL ESTATE BROKER." "THEY THEM WENT ON TO SAY, INCORRECTLY, "AS SUCH, HE LISTED APARTMENTS AND HOUSES FOR RENT OR SALE, SHOWED APARTMENTS AND TO PROSPECTIVE TENNANTS AND PURCHASERS, ATTEMPTED TO NEGOTIATE RENTAL AND SALES TRANSACTIONS, AND APPEARED AT THE SIGNING OF CONTRACTS OF SALE AND CLOSING OF TITLES. ""

THE FACT OF THE MATTER IS, AS I CLEARLY STATED IN MY OPENING STATEMENT TO THE TAX COURT, AFTER MY AUTOMOBILE ACCIDENT, WHICH OCCURED ON APRIL 19, 1968, I, IN NO WAY, TOOK ACTIVE PART IN THE REAL ESTATE BUSINESS, NOR DID I EVER AGAIN RETURN TO MY POSITION OF A FULL DUTY NYC FIREMAN. I DID, HOWEVER, RECEIVE INCOME FROM BOTH OF THESE SOURCES, FOR THE REMAINDER OF 1968, adn all of 1969, ALL OF WHICH WAS DULLY REPORTED, AND THE PROPER TAX WAS PAID, ALL OF IT, WHEN IT WAS DUE.

FURTHER, I EXPLAINED TO THE TAX COURT THAT THE FIRE COMMISSIONER STRICTLY FORBIDS A MEMBER FROM ENGAGING IN PART TIME WORK WHEN HE, THE MEMBER, IS UNABLE TO GIBE THE CITY A FULL DAYS WORK.

THAT IS TO SAY, IF A MEMBER IS INJURED, ON SICK LEAVE, OR ON LIGHT DUTY, (AND I WAS ON ALL OF THEM), A MEMBER MAY NOT ENGAGE IN PART TIME WORK UNDER PENALTY OF IMMEDIATE DISSMISSAL.

WHAT I AM TRYING TO ESTABLISH HERE IS, IN ADDITION TO IT BEING PHYSICALLY IMPOSSIBLE FOR ME TO PERFORM WORK IN ANY CAPACITY, FOR SOME TIME AFTER MY AUTOMOBILE ACCIDENT, THE WELL PUBLISHED, CLEARLY DEFINED, AND STRICTLY ENFORCED RULES REGARDING PART TIME WORK, PREVENTED ME, AFTER MY AUTOMOBILE ACCIDENT, FROM BEING ACTIVELY ENGAGED IN THE REAL ESTATE BUSINESS FOR THE BALANCE OF 1968, or AT ANY TIME DURING 1969.

ARGUMENTPOINT 2

(WITH REFERENCE TO TAX COURT MEMO 1974-185 MEMORADUM FINDINGS OF FACT AND OPINION PAGE 7 )

THE TAX COURT CORRECTLY DESCRIBES THE TOTAL DEPOSITS IN MY CHECKING ACCOUNT FOR THE YEARS IN QUESTION, HOWEVER, THEY NEGLECT TO LIST THE DISPURSAIS WHICH, CLOSE SCRUTINY OF MY BANK RECORDS, WOULD INDICATE TRANSACTIONS OF A WASH-OUT NATURE. THERE IN NO BUILD UP OF DEPOSITS AND THE FACT OF THE MATTER IS FROM THE BEGINNING OF THE PERIOD UNDER QUESTION THE BANK RECORDS SHOW A BALLANCE OF LESS THAN \$1,500. . . AND AT THE END OF THE PERIOD UNDER QUESTION LESS THAN \$2,000.

ARGUMENTPOINT 3

( WITH REFERENCE TO TAX COURT MEMO 1974-185 MEMORADUM FINDINGS OF FACT AND OPINION PAGE 7 and 8 )

THE TAX COURT ERRED IN STATING, "" THE PETITIONER RECEIVED ADDITIONAL INCOME FROM HIS REAL ESTATE BUSINESS IN THE AMOUNTS OF \$ 5,600. AND \$ 15,000. DURING 1968 and 1969 RESPECTIVELY AS DETERMINED BY UNEXPLAINED DEPOSITS IN HIS CHECKING ACCOUNT.""

THE FACT OF THE MATTER IS I RECEIVED NO ADDITIONAL TAXABLE INCOME OTHER THAN THE INCOME I PROPERLY CLAIMED.

THE TAX COURT KEEPS REFERRING TO UNEXPLAINED DEPOSITS

THE FACT OF THE MATTER IS THAT I SPENT A TOTAL OF 7 HOURS ON 5 DIFFERENT OCASSIONS EXPLAINING FOR THE ATTORNEY FOR IRS THE CASH FLOW IN MY ACCOUNT, IN ADDITION TO SPENDING MORE THAN 3 1/2 HOURS ON THE STAND BEING QUESTIONED AND CROSS EXAMINED BY THE JUDGE AND THE ATTORNEY FOR IRS , EXPLAINING WHAT HAD TRANSPIRED.



ARGUMENTPOINT 4

( WITH REFFERENCE TO T.C. MEMO 1974-185 MEMORADUM FINDINGS OF FACT AND OPINION PAGE 8 PARAGRAPH 2))

THE TAX COURT ERRED IN STATING, " PETITIONERS UNDER PAYMENT OF TAX FOR THE THE YEARS 1968 AND 1969 WAS DUE IN PART TO NEGLIGENCE OR DISREGARD OF RULES AND REGULATIONS WITHIN THE MEANING OF SECTION 6653(a)."

THE WAS NO UNDERPAYMENT OF TAXES FOR THE YEARS 1968, and 1969 AND THERE WAS NO NEGLIGENCE OR DISREGARD OF RULES OR REGULATIONS ON MY PART. THE REASON FOR MY LACK OF ORDERLY RECORDS DURING THAT PERIOD OF MY LIFE WAS THE FACT THAT I WAS INVOLVED IN A VERY SERIOUS, NEAR FATAL AUTOMOBILE ACCIDENT. AN ACCIDENT IN WHICH MY AUTOMOBILE WAS DEMOLISHED AND MY HEAD STRUCK THE WINDSHIELD OF MY CAR WITH SUCH FORCE AS TO SMASH THE WINDSHIELD, AND BECOME IMBEDDED IN IT, UNTILL I WAS EXTRACTED, IN AN UNCONCIOUS CONDITION, AND TAKEN TO A HOSPITAL. I SPENT SEVERAL DAYS IN THE HOSPITAL, TWO MONTHS ON SICK LEAVE, AND TEN MONTHS ON LIGHT DUTY, AND AT NO TIME, FOR THE BALANCE OF 1968, AND ALL OF 1969. DID I EVER ACTIVELY PATICIPATE IN THE REAL ESTATE BUSINESS , NOR DID I EVER AGAIN RETURN TO FULL DUTY AS AN ACTIVE FIREMAN..

THE CONSTANT ATTEMPT TO TRANSLATE THE FACT THAT MY RECORD KEEPING WAS FAULTY DURING THAT DISTRESSING PERIOD OF MY LIFE INTO MY HAVING UNDERPAID MY TAX IS A GROSS MISTAKE.

CONCLUSION

THE VARIOUS TYPES OF REAL ESTATE ACTIVITIES THAT GENERATED THE REVENUE THAT MADE UP THE MAJOR PORTION OF THE CASH FLOW IN MY CHECKING ACCOUNT WAS CORRECTLY DESCRIBED IN THE "FINDINGS OF FACT" PORTION OF THE TAX COURT MEMO..

THE TAX COURT ERRED IN THEIR INSISTANCE THAT I TOOK AN ACTIVE PART IN THE ACTIVITY AS DESCRIBED..

AFTER MY AUTOMOBILE ACCIDENT, FOR THE BALANCE OF 1968, AND ALL OF 1969, I, AT NO TIME, TOOK AN ACTIVE PART IN THE VARIOUS REAL ESTATE ACTIVITIES DESCRIBED, AND ANY MONEIES I RECEIVED FOR MY LACK OF PARTICIPATION, WERE TAKEN NATURE, DULY REPORTED, AND THE PROPER TAX PAID ON THEM WHEN IT WAS DUE.

I URGE THIS COURT TO SET ASIDE THE DECISION ENTERED UNDER RULE 155 BY THE TAX COURT AND EXCEPT MY TAX RETURNS, AS FILLED BY ME FOR THE YEARS AT ISSUE, AS CORRECT AND PROPER.

RESPECTFULLY SUBMITTED

William H. Reid  
WILLIAM H. REID PRO-SE

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DEC 1 1974

Mr. A. Daniel Fusaro, Clerk  
United States Court of Appeals  
for the Second Circuit  
U. S. Court House, Foley Square  
New York, New York 10007

Re: William H. Reid  
Petitioner-Appellant  
vs.  
Commissioner of Internal Revenue,  
Respondent-Appellee  
Docket No. 2526-72

Dear Mr. Fusaro:

There is transmitted herewith, under my certificate, the record on appeal in the above-entitled case, together with but separately certified, the original exhibits.

Appeal is taken by the petitioner in this Court. Address of the appellant is 17 Park Avenue, Apartment 4-C, New York, New York 10016.

Counsel for the Commissioner of Internal Revenue are Scott P. Crampton, Assistant Attorney General, Tax Division, United States Department of Justice, Washington, D. C. 20530, upon whom service of documents and papers in proceedings in the Court of Appeals is to be made, and Meade Whitaker, Chief Counsel, Internal Revenue Service.

Yours very truly,

Charles S. Casazza  
Clerk of the Court

By (signed) Elizabeth S. Yerovsek  
Deputy Clerk in Charge of  
Appellate Matters

Enclosure

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WILLIAM H. REID,  
Petitioner  
vs.  
COMMISSIONER OF INTERNAL REVENUE,  
Respondent

Tax Court Docket No. 2526-72

	Document No.
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Answer .....	4
Change of address filed by petitioner .....	5
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Notice of filing notice of appeal .....	17
Notice of assembling and date for transmission of record .....	18
Motion by respondent to withdraw exhibits - Granted .....	19

\* \* \* \* \*

The following exhibits are separately certified:  
Exhibits 1-A thru 3-C, 4 thru 7 attached to stipulation of  
facts; Petitioner's exhibits 8 thru 13 admitted in evidence;  
Respondent's exhibit D admitted in evidence.



# UNITED STATES TAX COURT

## GENERAL DOCKET

DOCKET NO. 2526-72

WILLIAM H. REID  
17 Park Ave. Apt. 4C  
~~195 Willoughby Avenue~~  
New York, N.Y. 10016  
~~Brooklyn, New York 11205~~

PETITIONER.

VS.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

### APPEARANCES FOR PETITIONER:

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

Date Month Day Year	Filings and Proceedings	Action	Served
Apr. 10, 1972	PETITION FILED: FEE PAID Apr. 10, 1972		Apr. 12, 1972
Apr. 10, 1972	REQUEST by petr. for trial at New York City.	GRANTED New York, N.Y. Apr. 12, 1972	Apr. 12, 1972
May 22, 1972	ANSWER filed by Resp.		May 24, 1972
Sept. 12, 1973	CHANGE OF ADDRESS filed by Petr.		SEP 14 1973
Nov. 14, 1973	NOTICE OF TRIAL on Feb. 19, 1974 at New York, N. Y.		Nov. 14, 1973
Feb. 19, 1974	TRIAL at New York, New York before Judge Featherston.		
	STIPULATION OF FACTS filed, with exhibits attached.		
	Resp. Trial Memorandum filed. Petr. received a copy		
	of Resp. Memorandum.		
	ORIGINAL BRIEFS DUE: May 6, 1974 (the petitioner		
	may file a brief if he wishes too.		
	SUBMITTED TO JUDGE FEATHERSTON		
Mar. 18, 1974	TRANSCRIPT of Feb. 19, 1974 rec'd.		
May 6, 1974	BRIEF for Respondent filed. (Serve Per Judge)		MAY 13 1974
July 16, 1974	MEMORANDUM FINDINGS OF FACT AND OPINION filed, Judge		JUL 16 1974
	Featherston. Decision will be entered under Rule 155.		
Aug. 23, 1974	RESPONDENT'S COMPUTATION filed.		AUG 29 1974
Aug. 29, 1974	NOTICE of Filing of computation under Rule 155		AUG 29 1974
	and hearing on Sept. 25, 1974 at Washington, D.C.		
	(Objection due 5 days prior to hearing).		

(Continued to Page 2)

Form No. 34  
May 1970

2526-72

WILLIAM H. REID

**PETITIONER**

PAGE 2

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T. C. Memo. 1974-185

UNITED STATES TAX COURT

WILLIAM H. REID, Petitioner v.  
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 2526-72.

Filed July 16, 1974.

William H. Reid, pro se.

Patrick E. Whelan, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

FEATHERSTON, Judge: Respondent determined deficiencies in petitioner's Federal income tax and additions to tax as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Addition to Tax (Sec. 6653(a), I.R.C. 1954)</u>
1968	\$ 3,414.02	\$170.70
1969	\$18,941.52	\$947.08

- 2 -

Several concessions having been made, 1/ the issues remaining for our decision are as follows:

1. Whether petitioner realized additional income as determined by respondent through use of the bank deposits method of income reconstruction; and
2. Whether any part of the underpayment for each of the years 1968 and 1969 was due to "negligence or intentional disregard of rules and regulations" within the meaning of section 6653(a). 2/

#### FINDINGS OF FACT

William H. Reid (hereinafter petitioner) was a resident of Brooklyn, New York, at the time he filed his petition herein. During 1968 and until October 2, 1969, he was employed by the City of New York Fire Department as a Fireman 1st Grade. He reported income from this source in

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1/ Petitioner conceded the disallowance of a casualty loss for 1968 of \$1,850, and respondent conceded that petitioner's total bank deposits for 1968 and 1969 were \$23,466.92 and \$48,975.47, respectively.

2/ All section references are to the Internal Revenue Code of 1954, as in effect during the tax years in issue, unless otherwise noted.



the amounts of \$9,842.80 and \$9,192.72 on his returns for 1968 and 1969, respectively.

During the years in issue, petitioner was also self-employed as a licensed real estate broker. As such, he listed apartments and houses for rent or sale, showed apartments and houses to prospective tenants or purchasers, attempted to negotiate rental and sales transactions, and appeared at the signing of contracts of sale and at closings of titles.

If a prospective tenant rented an apartment, petitioner would keep one month's rent, often the amount of the deposit, as his commission. In addition, the tenant would usually pay petitioner an additional month's rent in advance and a security deposit equal to one month's rent. These additional sums were paid over to the owner of the building. The broker's commission was evenly divided between petitioner and any sales person responsible for the rental of the property or for the referral of the tenant.

The houses which petitioner sold were in the \$17,000-to-\$20,000 range. Petitioner received a 6-percent commission on the sales price, a portion of which would be paid to the sales person responsible for the listing and/or sale.

In addition to these activities, petitioner also engaged in real estate speculation. He and other individuals would buy a house for cash, make the necessary improvements to qualify for FHA financing, and then sell the house. Petitioner served as banker for the other persons who were involved with him in these speculative activities. As such, he would receive the cash, make the purchases and payments for improvements, and then receive the sales proceeds and distribute such sums to the respective participants.

On April 19, 1968, petitioner was involved in an automobile accident. He was admitted to Cumberland Hospital in Brooklyn, where he was found to have had multiple lacerations and abrasions of the forehead as well as a cerebral concussion. On April 24, 1968, when he was discharged from the hospital, his condition was determined to be good.

Petitioner was placed on sick leave from the Fire Department for 59 days, and then on light duty for 10 months. While on light duty, he performed clerical services. For about 2-1/2 months prior to his retirement on disability from the New York City Fire Department, effective October 2, 1969, petitioner was on terminal leave from the Department. The medical board of the Fire Department determined that petitioner should be retired because



he was not capable of traveling by public conveyance and because he was in danger of falling and seriously injuring himself due to his unsteadiness and fear of falling.

Despite the automobile accident, petitioner continued to receive income from his real estate business because a sales person in his real estate office and another associate continued its activities.

During 1968 and 1969, petitioner maintained a checking account, No. 2-65782, at Manufacturers Hanover Trust Company, Brooklyn, New York. During these years, petitioner's only sources of funds were his salary from the Fire Department and his earnings as a real estate broker. All funds from these sources were deposited in this checking account. Deposits to this account totaled \$23,466.92 and \$48,965.47 during 1968 and 1969, respectively.

Petitioner used notations made on his 1968 and 1969 desk calendars to compute his gross income from his real estate business for those years. These calendars were disposed of at the end of each year. While petitioner retained canceled checks to verify his claimed business expenses, he disposed of those checks which would substantiate claimed disbursements to other parties. Although he often gave receipts for deposits he received

for rental apartments, he had no copies for presentation at trial.

On Schedule C of his income tax returns for 1968 and 1969, petitioner reported gross income of \$6,830 and \$8,000, respectively, from his real estate brokerage business.

Due to the absence of adequate records, respondent, in his statutory notice of deficiency, computed petitioner's taxable income for 1968 and 1969 on the basis of bank deposits made during those years. Accordingly, based on the following computations, he increased petitioner's taxable income:



	Years	
	<u>1968</u>	<u>1969</u>
Total deposits <sup>1/</sup>	\$23,953.92	\$49,515.00
Less:		
Gross receipts reported (from real estate business)	\$6,830.00	\$8,000.00
Proceeds on sale of stock	2,200.00	
Net salary (after withholding)	<u>7,535.91</u>	<u>6,653.84</u>
Total explained sources	<u>16,565.91</u>	<u>14,653.84</u>
Unexplained deposits deemed additional income	<u>\$ 7,388.01</u>	<u>\$34,861.16</u>

<sup>1/</sup> At trial, respondent conceded that petitioner's bank deposits for 1968 and 1969 were \$23,466.92 and \$48,975.47, respectively. The revised figure for 1969 should be adjusted downward to reflect a \$10 deposit made on Jan. 7, 1970, which was inadvertently included. \$945 of the 1969 deposits represents disability payments which are exempt from taxation. Sec. 104, I.R.C. 1954.

#### ULTIMATE FINDINGS OF FACT

1. Petitioner received additional taxable income from his real estate business in the amounts of \$5,600 and \$15,000 during 1968 and 1969, respectively, as determined

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by unexplained deposits to his checking account, adjusted by disbursements made to others.

2. Petitioner's underpayment of tax for 1968 and 1969 was due, in part, to negligence or intentional disregard of rules and regulations within the meaning of section 6653(a).

#### OPINION

In view of petitioner's failure to maintain adequate accounting books and records of his real estate brokerage income, respondent was justified in resorting to the bank deposits method of income reconstruction. Louis Halle, 7 T.C. 245, 250 (1946), affd. 175 F.2d 500 (C.A. 2, 1949), certiorari denied 338 U.S. 949 (1950). Employing a variation of that method, respondent started with gross deposits, deducted reported income and identified nonincome items included in the deposits, and treated the remaining unexplained deposits as taxable income. This procedure cast upon petitioner the burden of showing that the unexplained deposits were not taxable income.

Petitioner steadfastly maintains that the deposits so treated as taxable income were nontaxable amounts which



he held for and paid to others. Such amounts, he argues, represented shares of the real estate commissions belonging to his sales personnel; rental security deposits received on behalf of the apartment owners he represented; sums received from others for real estate speculation (used to purchase houses and to pay for improvements thereto) and sums received from the sales of such houses, held pending disbursement to his fellow speculators; and mortgage monies received in connection with his sales of houses, including "binder fees," and the like. To support his testimony, petitioner introduced lengthy schedules in which he undertook to explain the nature of the deposits which he claims were not taxable.

We are satisfied, from a consideration of the record as a whole, that some of the deposits in petitioner's accounts are nontaxable. Indeed, respondent fairly states in his brief that "there is probably some merit to \* \* \* [petitioner's] contention that he was a conduit for a portion of his deposits." On the other hand, cross-examination of petitioner revealed that he had no records to substantiate his characterizations of the numerous deposits and that his explanations in Court of individual items were often not consistent with the explanations given agents of

the Internal Revenue Service during the course of their investigations. Further, he admitted that he had no personal recollection of specific items. For these reasons, we cannot accept petitioner's schedules as accurate.

However, to avoid a harsh and unrealistic result, we think an estimate must be made, in the light of the entire record, of the amounts omitted from petitioner's income. Cohan v. Commissioner, 39 F.2d 540 (C.A. 2, 1930). Our Ultimate Findings reflect our best judgment as to the amounts of these omissions.

Respondent's determination that at least a part of the underpayment for each of the years at issue was due to negligence or intentional disregard of the rules and regulations is prima facie correct. Rule 142, Tax Court Rules of Practice and Procedure. Since petitioner presented no evidence to the contrary, he is liable for the additions to tax on the underpayments determined above. James S. Reilly, 53 T.C. 8, 14 (1969); James W. England, Jr., 34 T.C. 617, 623 (1960).

Petitioner's underpayment of his Federal income tax for 1968 and 1969 was due, in part, to his failure to maintain adequate records of his real estate business. Failure to keep such records as would enable him to file



correct returns violates the express requirements of section 6001 of the Code and of sections 1.446-1(a)(4) and 1.6001-1(a) and (e), Income Tax Regs. We need not decide whether such failure resulted from negligence or intentional disregard of these rules and regulations, for in either case petitioner is liable for the additions to tax. For these reasons, the additions to tax must be sustained.

To reflect the foregoing and the concessions by the parties,

Decision will be entered  
under Rule 155.